(28,521)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 566.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
History of proceedings	1	1
Amended petition	2	1
Appendix "A"	18	11
Appendix "B"	19	12
Demurrer to amended petition	20	12
Argument and submission of demurrer	20	12
Order and memorandum entered by the court	21	13
Judgment of the court	22	13
Application for and allowance of appeal	22	14
Certificate of clerk	23	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1922.

1 Court of Claims.

No. 34064.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

THE UNITED STATES.

I. *History of Proceedings.*

On February 1, 1919, the plaintiff filed its original petition.

On March 6, 1919, the plaintiff filed an amendment to the petition.

On November 10, 1919, the defendant filed a motion to require plaintiff to make its petition more definite and certain. This motion was overruled without prejudice on December 1, 1919.

On January 12, 1920, the defendant was allowed, in open court, to file demurrer, and said demurrer to the original and amended petition was filed January 27, 1920.

On March 8, 1920, the demurrer was argued and submitted.

On March 22, 1920, the court filed an order sustaining defendant's demurrer and granting plaintiff thirty (30) days within which to amend petition.

On May 19, 1920, the plaintiff filed an amended petition. Said amended petition is as follows:

2 II. *Amended Petition and Appendices A & B.*

Filed May 19, 1920.

Amended Petition.

Petitioner by leave of court files this, its amended petiton, to take the place of its petition filed on the 1st day of February, 1919, and an amendment thereto by separate paper filed on the 28th day of February, 1919, and says:

I.

Petitioner is a corporation organized under the laws of the State of Missouri. It operates and at the times hereinafter stated, did operate a system of railways in said State and others.

Petitioner has at all times borne true allegiance to the Government of the United States and never in any way aided, abetted or gave encouragement to rebellion against said Government.

II.

During the periods hereinafter stated petitioner, under contracts with the Postoffice Department, carried the mails over mail routes established by the postal authorities, on said railway lines; such mail routes being described hereinafter by their terminal points
3 and by numbers given to them by the postal authorities. Such contracts, as to each of said routes, consisted of a statement prepared by a proper officer of petitioner, on a form furnished by the Postoffice Department, of the distances between the railway stations and a clause in the words below, printed on the same form and signed by an authorized officer of petitioner:

"The company named below agrees to accept and perform mail service upon the conditions prescribed by law and the regulations of the department applicable to railroad mail service."

It was stipulated and understood between petitioner and the Postmaster General, in the negotiating and signing of said agreements, severally, that they related to terms of four years to commence respectively on July 1st, following the signature.

III.

By acts approved March 3, 1873 (17 Stat., 558), and July 12, 1876 (19 Stat., 78), making appropriation for the expenses of the Postoffice Department, Congress fixed the rates of compensation to be paid for the transportation of the mails, and in said act of July 12, 1876, it was provided that, for transportation of the mails over land-aided railroads, there should be paid only 80 per cent of the rates so established.

IV.

Said act of March 3, 1873, contained a new and amplified plan by which to compenste the railroad companies equitably and adequately for the transportation of the mails. Following is the text of that part of said act by which the rates of compensation were designated:

"For increases of compensation for the transportation of
4 mails on railroad routes upon the condition and at the rates hereinafter mentioned, five hundred thousand dollars, or so much thereof as may be necessary. Provided, that the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned, to wit: That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures and furniture, in a car or apartment properly lighted and warmed, shall be provided for route agents to accompany and distribute the mails, and that the pay per mile per annum shall not exceed the follow-

ing rates, namely: On routes carrying their whole length an average weight of mails per day of two hundred pounds, fifty dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars; one thousand five hundred pounds, one hundred and twenty-five dollars; two thousand pounds, one hundred and fifty dollars; three thousand five hundred pounds, one hundred and seventy-five dollars; five thousand pounds, two hundred dollars, and twenty-five dollars additional for every additional two thousand pounds." * * *

Said act of Congress approved July 12, 1876 (19 Stat., 79), provided that the compensation to the railroad companies for the transportation of the mails should be reduced "ten per centum per annum from the rates fixed and allowed" by said act of 1873. By similar phraseology the corresponding act of Congress approved July 17, 1878 (20 Stat., 142) made a further reduction of 5 per cent in the rates of compensation. The corresponding act of Congress approved March 2, 1907 (34 Stat., 1212), contained the following provision:

"The Postmaster General is hereby authorized and directed to readjust the compensation to be paid from and after the first day of July, nineteen hundred and seven, for the transportation of
5 mail on railroad routes carrying their whole length an average weight of mail per day of upward of five thousand pounds by making the following changes in the present rate per mile per annum for the transportation of mail on such routes, and hereafter the rates on such routes shall be as follows: On routes carrying their whole length an average weight of mail per day of more than five thousand pounds and less than forty-eight thousand pounds the rate shall be five per centum less than the present rates on all weights carried in excess of five thousand pounds, and on routes carrying their whole length an average weight of mail per day of more than forty-eight thousand pounds the rates shall be five per centum less than the present rates on all weights carried in excess of five thousand pounds, and for each additional two thousand pounds in excess of forty-eight thousand pounds at the rate of nineteen dollars and twenty-four cents upon all roads other than land-grant roads, and upon all land-grant roads the rate shall be seventeen dollars and ten cents for each two thousand pounds carried in excess of said forty-eight thousand pounds."

In putting said act of March 3, 1873, into effect the Postmaster General interpreted it as requiring that the full rates of compensation named therein be paid. In putting into effect said act of July 12, 1876, he took the view that the full rates then in effect were a fixed basis for the reduction of compensation; and in the same sense he applied said enactments of June 17, 1878, and March 2, 1907. In that way the compensation due petitioner under its said contracts was computed. Rates of compensation, so computed, were published in circulars and orders of the Postoffice Department issued at various times before July 1, 1910, and are set out in section 1317 of a revised

edition of said Postal Laws and Regulations which was promulgated October 1, 1913.

6 V.

For the purposes of said act of March 3, 1873, the Postmaster General divided the country geographically into four sections, and the mails have since been weighed, and new agreements for the transportation thereof signed, in one of said divisions each year. Some of petitioner's said routes lie in the division which the Postmaster General thus denominated the third and the others in the division denominated the fourth. The mails were weighed and said agreements signed, as to the Fourth Division lines in the months of February to June of the year 1910, and as to the Third Division routes the weighing and contracting occurred during the same period in 1911, the agreements to be effective on July 1st of each year.

VI.

The matter to be transported under said contracts was defined by the act of Congress approved March 3, 1879, making appropriation for expenses of the Postoffice Department (20 Stat., 355). That act classified the mails to the following effect: In the first, second and third classes were included letters, postal cards, other written matter, newspapers, and other periodical publications, books, circulars, other printed matter not published periodically, proof sheets and manuscript copy for printers. Fourth-class mails were defined, as below, by section 20 of said act (p. 360):

"That mailable matter of the fourth class shall embrace all matter not embraced in the first, second, or third class, which is not in its form or nature liable to destroy, deface or otherwise damage the contents of the mail bag, or harm the person of any one engaged in the postal service, and is not above the weight provided by law, which is hereby declared to be not exceeding four pounds for
7 each package thereof, except in case of single books and documents published or circulated by order of Congress, or official matter emanating from any of the departments of the Government or from the Smithsonian Institution, or which is not declared nonmailable under the provisions of section 3893 of the Revised Statutes as amended by the act of July 12, 1876, or matter pertaining to lotteries, gift concerts or fraudulent schemes or devices."

Section 3893 of the Revised Statutes relates solely to printed matter of obscene, lewd, or lascivious character.

By said act of Congress authority was given to the Postmaster General to determine what articles were of a nature to cause damage to the mails or to persons engaged in the postal service; and the Postmaster General by orders fixed upon the following articles and excluded them from the mails: Intoxicating liquors, poisons, explosive, or inflammable matter, animals, birds, insects and reptiles alive or (unless prepared packed in certain prescribed ways) dead; articles

exhaling a bad odor; pistols, medicines and toilet articles (unless packed in certain prescribed ways); poisons, fruits or vegetable matter liable to decomposition, comb honey and liquors liable to ignition by shock or jar. Said orders of the Postmaster General were carried into the Postal Laws and Regulations promulgated in 1902, becoming sections 494 to 500, inclusive, thereof.

From a time long before 1879 the laws of the United States constantly fixed the rates of postage for each class of mails and graduated the same according to the weights of the packages and without regard to the distance to be traveled.

8 VII.

By section 8 of the act approved August 24, 1912 (37 Stat., 539), making appropriation for the expenses of the Postoffice Department for the fiscal year then current, Congress, for the purpose of providing speedy and cheap transportation for farm products and manufactures and other articles not admitted theretofore to the mails, established a parcel post. Among the provisions of said section are the following (pp. 557, 558):

"That hereafter fourth-class mail matter shall embrace all other matter, including farm and factory products, not now embraced by law in either the first, second or third class, not exceeding eleven pounds in weight, nor greater in size than seventy-two inches in length and girth combined, nor in form or kind likely to injure the person of any postal employe or damage the mail equipment within a period reasonably required for transportation and delivery.

"That for the purpose of this section the United States and its several territories and possessions, excepting the Philippine Islands, shall be divided into units of area formed by the intersecting parallels of latitude and meridians of longitude, represented on appropriate postal maps or plans, and such units of area shall be the basis of eight postal zones as follows:

"The Postmaster General may readjust the compensation of star route and screen wagon contractors if it should appear that as a result of the parcel post system the weight of the mails handled by them has been materially increased. Before such readjustment, however, a detailed account must be kept as to the amount of business handled by such star route or screen wagon contractors before and after this section becomes effective for such a period as to clearly demonstrate the amount of the increase and that such increase in the weight of the mails was due to the adoption of the parcel post system."

9 Zones, numbered from 1 to 8, were designated by said act in accordance with the radial distances to be traveled from the points of mailing, and rates of postage were named which were graduated with reference to the number of zones included in the transit as well as to the weights of the mail packages.

VIII.

Under orders issued by the Postmaster General in the summer and autumn of 1912 the parcel post so provided for was inaugurated on January 1, 1913, limited to weights of eleven pounds as prescribed in said act, and during the remaining portions of said contract periods, terminating on June 30, 1914, and June 30, 1915, respectively, petitioner transported a large volume of mail packages of weights ranging up to eleven pounds and of such nature as, before the passage of such act, could not have been admitted to the mails. For some months in November and the first part of December, 1912, the Postmaster General caused the mails, as hauled by the contractors operating screen wagons at petitioner's stations, to be weighed, and, again, for several weeks in February and March, 1913, he caused the mails hauled by said contractors, including the parcel-post matter, to be weighed, and he kept detailed accounts of the results of each of said weighings. No provision for compensation to the mail-carrying railways for the parcel-post service was made until in the act of Congress approved March 4, 1913, making appropriation for the expenses of the Postoffice Department for the fiscal year ending June 30, 1914 (37 Stat., 791). That act contained (p. 797), the following provision:

"That on account of the increased weight of mails resulting from the enactment of section eight of the act of August twenty-fourth, nineteen hundred and thirteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after July first, nineteen hundred and thirteen, for the remainder of the contract terms, not exceeding five per centum thereof per annum, excepting upon routes weighed since January first, nineteen hundred and thirteen, and to be readjusted from July first, nineteen hundred and thirteen, until otherwise provided by law."

IX.

Said limit of weight to eleven pounds per package of parcel-post matter continued in effect only until August 15, 1913. By an order effective on said latter day the Postmaster General, having first obtained the consent of the Interstate Commerce Commission, made various changes in the rates of postage and other conditions of the service and raised the weight limit to twenty pounds. Again, by an order effective January 1, 1914, the Postmaster General, having obtained the consent of the Interstate Commerce Commission, made changes in the details of the service and, for transportation in one zone or two zones, raised the weight limit to fifty pounds per package. Under said new designations of weight, and in accordance generally, with said orders of the Postmaster General, the parcel-post matter was transported by petitioner to the ends of its said contract periods. The first of said orders bore date of July 25, 1913, being numbered 7349, and the other order bore date of December 18,

1913, being numbered 7720. In relation to said increases of weight the act of Congress approved July 28, 1916, making appropriation for the expense of the Postoffice Department for the fiscal year then current (39 Stat., 412), contained two sections, as follows (p. 425):

Sec. 3. That on account of the increased weight of mails resulting from the Postmaster General's order numbered seventy-seven
11 hundred and twenty, of December eighteenth, ninete-n hundred and thirteen, respecting rates upon and limit of weight of parcel post packages, effective from January first, nineteen hundred and fourteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after January first, nineteen hundred and fourteen, for the remainder of the contract terms, not exceeding one per centum thereof per annum.

Sec. 4. That on account of the increased weight of mails resulting from the Postmaster General's order numbered seventy-three hundred and forty-nine, of July twenty-fifth, nineteen hundred and thirteen, respecting rates upon and limit of weight of parcel post packages in the local, first and second zones, and effective from August fifteenth, nineteen hundred and thirteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after August fifteenth, nineteen hundred and thirteen, for the remainder of the contract terms, not exceeding one-half of one per centum thereof per annum.

X.

Neither when putting into effect said act of March 4, 1913, nor at any other time did the Postmaster General ascertain the weights of the parcel-post matter in relation to the railway routes. He merely, through examination and reports made by his subordinates, estimated, in proportion to the mails carried just before January 1, 1913, the weight of the parcel-post matter carried on each of said routes. In allowing compensation to the railway companies for the parcel-post service he interpreted said act as limiting him to 5 per cent of the previous compensation and giving him discretion to allow for the service on any route any increase within that limit
12 or no increase whatever. Action was taken by him, regarding the postal routes concerned herein, as follows:

For certain routes increases of 5 per cent were designated and allowed, which aggregated the sum of $4,111.98.

For others of said routes, increases ranging from 1.6 per cent to 4 per cent were designated and allowed, which aggregated the sum of $902.81.

For others of said routes no increases whatever were allowed.

In appendices hereto there are stated (*a*) the increases so allowed and paid, and (*b*), in relation to the routes for which no increases were paid, the annual compensation of those routes severally at that time for transportation of the ordinary mails.

XI.

In putting into effect said act of July 28, 1916, the Postmaster General allowed to the greater part of said routes, hereinafter described, the full rates of increase named therein, viz., (*a*) one-half of 1 per cent and (*b*) 1 per cent, above the compensation allowed and paid at said times when said changes in the weight limit were made, which full allowances aggregated the sum of $552.61.

To others of said routes he allowed no increases whatever.

In appendices hereto there are stated (*a*) the increases so allowed and paid and (*b*), in relation to the routes for which no increases were paid, the annual compensation of those routes at the time stated as computed by the Postmaster General.

13 ## XII.

The parcel-post matter was radically different in character from the ordinary mails as constituted before January 1, 1913. It was lighter, in proportion to space occupied, and was less regular in shape and more difficult to handle; and the parcel-post matter admitted by the increase of the weight limit above eleven pounds was lighter, in proportion to space, and less regular in shape than that carried before said increase. The parcel-post matter therefore, both before and after August, 1915, was more expensive to transport than were the respective previous mails of equal weight.

XIII.

The compensation fixed for the transportation of the ordinary mails from January 1 to June 30th, inclusive, in 1913 (the period for which no compensation was received with respect to the parcel-post service on any of its routes), was $50,314.40.

XIV.

Said increases of compensation were far less than was necessary to compensate petitioner for said parcel-post service. The least rates of increase which would have afforded such reasonable compensation were (*a*) 15 per cent per annum with respect to the packages of eleven pounds weight and less, and (*b*), for the entire portions remaining, after August 15, 1913, of said contract periods, 6 per cent of the compensation for the transportation, during the same time, respectively, of the mails as constituted on August 14, 1913. In detail it says its compensation for the parcel-post service should have been:

14 (1) For the six months January 1, to June 30, 1913, 15 per cent of the compensation fixed for transportation of the ordinary mails during that time, to wit, the sum of $7,547.16.

(2) For routes to which the full 5 per cent was allowed with respect to the original parcel-post matter the difference (10 per cent) between (*a*) 15 per cent and (*b*) 5 per cent of the compensation fixed for the transportation of the ordinary mails during the same time, to wit, the sum of $8,223.96.

(3) For routes to which increases of less than 5 per cent were paid with respect to the original parcel-post matter the difference (11.637 per cent) between (*a*) 15 per cent of the compensation fixed for the transportation of the ordinary mails during the same time and (*b*) the aggregate of the amounts it so received, to wit, the sum of $3,124.

(4) For routes to which nothing was allowed with respect to the parcel-post service limited to eleven pounds weight 15 per cent of the compensation fixed for the transportation of the ordinary mails the same time, to wit, the sum of $156.14.

(5) For routes to which said full statutory allowances of one-half of 1 per cent and 1 per cent were made by the Postmaster General the difference between (*a*) 6 per cent of the compensation fixed for transportation, during the same time, of the mails as constituted on August 14, 1913, and said aggregate sum allowed by him, which difference is $3,900.56.

(6) For routes to which the Postmaster General allowed nothing with respect to increases of weight above eleven pounds per package, 6 per cent per annum of the compensation fixed for transportation, during the same time, of the mails as constituted on August 14, 1913, to wit, the sum of $895.07.

15 XV.

When said provision was made for the parcel post, and when the same was inaugurated, the railroad companies, including petitioner, the chief officers of the Postoffice Department and the members of Congress in both houses having charge of postal legislation understood that compensation to the railroad companies therefor would be provided by Congress. The Postmaster General, in his report for 1912, suggested that action should be taken promptly by Congress to provide for the railroad companies the additional compensation to which they would be entitled. There was then sitting a body, established by previous legislation of Congress, popularly known as the "Bourne Commission," charged to investigate the entire subject of the railway mail pay. The principal railroads of the country, including claimant, were represented by a Committee on Railway Mail Pay. Said committee in December, 1912, in letters to the chairman of the House Committee on Postoffices and Post Roads and to the chairman of said commission, pointed out that no satisfactory determination of the compensation due for the parcel-post service could be reached before the service should be established and suggested that in an appropriation bill then in course of preparation

provision should be made for annual weighings of the mail to obtain bases for compensation of the railroad companies; but no such change in the weighing system was made by Congress in said bill nor in any legislation thereafter. After the Postmaster General had announced the increases to be paid to the railroad companies with respect to the parcel-post matter limited to eleven pounds, to wit, in August, 1913, said Committee on Railway Mail Pay submitted to the Postmaster General a protest in writing against both (1) the denial of all compensation to the railroad companies for the
16 parcel-post service previous to July 1st just past and (2) the amounts proposed to be paid for the service commencing on that day; and in other ways, during said contract terms, petitioner made protests to the Postoffice Department on both of said points.

XVI.

Much of the larger part of the mails on petitioner's routes and on the routes of the other important railroad companies were carried in postoffice cars, for which cars arrangements were made between the Postoffice Department and the railroad companies independent of the contracts for mail transportation, and, under such arrangements, such cars were in operation on petitioner's said routes at the time when the parcel post was established and at the times when the increases in weight of the parcel-post matter became effective. The greater part of the mails carried in such cars were loaded into and out of the same by contractors or other persons employed by the Postoffice Department, over whom petitioner and the other railroad companies had no control, and the Postal Laws and Regulations (sec. 1583), forbade that railroad employes should enter the postoffice cars when in motion for any other purpose than the operation of the trains. Moreover the parcel-post matter was so confused with the other mails that the employees of petitioner and the other railroad companies could not possibly have distinguished them, and removed them from the postoffice cars, if otherwise they had had opportunity.

Petitioner prays judgment against the United States for the total of said sums set out in paragraph XIV hereinbefore, viz., $23,846.89.

THE ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,
By BENJ. CARTER,
Its Attorney in Fact.

17 DISTRICT OF COLUMBIA, *ss:*

Before me, Jesse L. Conwell, a Notary Public in and for said District, Benj. Carter, whose name is written as a part of the signature of the foregoing petition, made oath on this 19th day of May, 1920, that the allegations of said petition are true to the best of his knowledge, information and belief.

BENJ. CARTER.

Subscribed and sworn to before me the day above written.
JESSE L. CONWELL,
Notary Public.

18

APPENDIX A.

Allowances, or Bases Therefor, under Act of March 4, 1913.

Five per Cent Allowances.

Fourth Division Routes to June 30, 1914.

Route No. and termini.	Allowances.
147,042—Cairo, Ill.-Texarkana, Ark.	$3,842.62
149,019—Lewisville, Ark.-Shreveport, La.	269.36
Total	$4,111.98

Allowances Less Than Five per Cent.

Third Division Routes.

Route No. and termini.	Annual compensation.	Annual per cent.	Allowance, amount.
145,051—North Jct., Ill.-Malden, Mo.	$9,174.35	3.87	$355.04
145,052—Lilbourn-New Madrid, Mo.	260.77	1.98	5.16
Total for 1 year	$9,435.12		$360.20
Total for 2 years	$18,870.24		$720.40

Fourth Division Routes.

147—Argenta-Altheimer, Ark.	$3,266.93	2.32	$73.26
147,030—Stuttgart-Gillett, Ark.	1,867.01	1.60	29.93
147,038—Stuttgart-England, Ark.	1,152.75	4.00	46.11
147,039—Blytheville-Paragould, Ark.	1,680.78	1.97	33.11
Totals for 4th Div.	$7,967.47		$182.41
19 Totals for 3rd Div.	$18,870.24		720.40
Totals for two Div.	$26,837.71		$902.81

Average per cent allowed 3.363+

Annual Compensation (1912) in Case of no Allowance.

Route No. and termini.	Annual compensation.
147,020—Robroy-Waldstein, Ark.....	$1,040.96

APPENDIX B.

Allowances, or Bases Therefor, under Act of July 28, 1916.

Allowances at Full One-half and One Per Cent.

Route No.	Annual compensation.	Aug. 15, 1913, to June 30, 1914.
147,026	$3,266.93	$30.44
147,030	1,867.01	17.90
147,038	1,152.75	11.29
147,039	1,680.78	16.15
147,042	76,852.45	476.73
	$84,819.92	$552.51

Annual Compensation (1912) in Cases of no Allowances.

Route No.	Annual compensation.	
145,051	$9,174.35	
145,052	260.77	
Total for 3rd Div. Routes.....		$9,435.12
149,019 4th Div.....		5,389.02
Total for two division-.....		$14,824.14

20 III. *Demurrer to the Amended Petition.*

Filed June 21, 1920.

The United States, by the Attorney General, demurrers to the amended petition filed herein, May 19, 1920, and for cause of demurrer says that the amended petition does not state facts sufficient in law to constitute a cause of action.

FRANK DAVIS, JR.,
Assistant Attorney General.

J. ROBERT ANDERSON,
Special Assistant to the Attorney General.

IV. *Argument and Submission of Demurrer.*

On January 17, 1921, the demurrer to the amended petition was argued and submitted by J. Robert Anderson, Esq., for the defendant, and by Benjamin Carter, Esq., for the plaintiff.

21 ## V. *Order and Memorandum Entered by the Court February 7, 1921.*

Order.

This case coming on to be heard was submitted upon the demurrer of the defendant to the plaintiff's petition and the argument of counsel thereon. On consideration whereof the court is of opinion that the demurrer of the defendant is well taken. It is therefore adjudged and ordered by the court that the said demurrer be and it is sustained, and the plaintiff's petition is dismissed.

Memorandum.

The claim of the plaintiff is not founded upon a contract, express or implied, nor has any act of Congress authorized the payment of the additional amount demanded by the plaintiff.

Congress authorized an increase in the compensation of the carriers not exceeding five per centum on account of parcel post, and this fact negatives the idea that Congress meant or understood that an implied contract was created by the parcel-post act.

It appears from the allegations of the petition that plaintiff voluntarily accepted and performed the service with knowledge of what it would receive, and it can not now claim an implied contract for a greater sum.

See New York, New Haven & Hartford R. R. Co. Case, 251 U. S., 123, 127 (53 C. Cls., 227, 236); Delaware, Lackawanna & Western R. R. Co. Case, 249 U. S., 385; Atchison, Topeka & Santa Fe Ry. Co. Case, 249 U. S., 451; The "Mail Divisor" Cases, 251 U. S., 326, 328, 339 (53 C. Cls. 258).

22 ## VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Seventh day of February, A. D., 1921, judgment was ordered to be entered as follows:

This case coming on to be heard was submitted upon the demurrer of the defendant to the plaintiff's petition and the argument of counsel thereon. On consideration whereof the court is of opinion that the demurrer of the defendant is well taken. It is therefore adjudged and ordered by the court that the said demurrer be and it is sustained, and the plaintiff's petition is dismissed.

By THE COURT.

VII. *Plaintiff's Application for and Allowance of an Appeal.*

Claimant shows to the court that the amount claimed by the petition in this case is more than three thousand dollars ($3,000.00); that a demurrer was filed to the petition, after amendment of the averments thereof, and, said demurrer having been heard by the court, a judgment was rendered on the 7th day of February 1921 sustaining the demurrer and dismissing the petition. Claimant applied hereby for an appeal from said judgment to the Supreme Court of the United States.

BENJ. CARTER,
Attorney for Claimant.

Filed May 4, 1921.

Ordered: That the above appeal be allowed as prayed for.
May 23, 1921.

By THE COURT.

23 Court of Claims.

No. 34064.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of demurrer; of the order and memorandum filed by the court; of the judgment of the court; of the plaintiff's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Eighth day of June, A. D., 1921.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 28,521. Court of Claims. Term No. 566. The St. Louis Southwestern Railway Company, appellant, vs. The United States. Filed October 4th, 1921. File No. 28,521.